

12-9-2015

Syringa v. Idaho Dept of Administration Respondent's Brief 1 Dckt. 43027

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Syringa v. Idaho Dept of Administration Respondent's Brief 1 Dckt. 43027" (2015). *Idaho Supreme Court Records & Briefs*. 5535.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/5535

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

SYRINGA NETWORKS, LLC, an Idaho
limited liability company,

Plaintiff-Respondent-Cross Appellant,

vs.

IDAHO DEPARTMENT OF
ADMINISTRATION,

Defendant-Appellant-Cross Respondent,

and

ENA SERVICES, LLC, a Division of
EDUCATION NETWORKS OF AMERICA,
INC., a Delaware corporation; QWEST
COMMUNICATIONS, LLC, a Delaware
limited liability company,

Defendants-Cross Respondents.

Supreme Court Docket No. 43027-2015
Ada County No. CV-2009-23757

RECEIVED
IDAHO SUPREME COURT
COURT OF APPEALS

2015 DEC -9 PM 2:34

SYRINGA NETWORKS, LLC, an Idaho
limited liability company,

Plaintiff-Respondent,

vs.

ENA SERVICES, LLC, a Division of
EDUCATION NETWORKS OF AMERICA,
INC., a Delaware corporation,

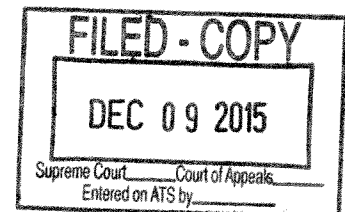
Defendant-Appellant,

and

IDAHO DEPARTMENT OF
ADMINISTRATION; QWEST
COMMUNICATIONS, LLC, a Delaware
limited liability company,

Defendants.

Supreme Court Docket No. 43027-2015
Ada County No. CV-2009-23757



COPY

SYRINGA NETWORKS, LLC, an Idaho
limited liability company,

Plaintiff-Respondent,

vs.

QWEST COMMUNICATIONS, LLC, a
Delaware limited liability company.

Defendant-Appellant,

and

IDAHO DEPARTMENT OF
ADMINISTRATION; ENA SERVICES, LLC, a
Division of EDUCATION NETWORKS OF
AMERICA, INC., a Delaware corporation,

Defendants.

Supreme Court Docket No. 43027-2015
Ada County No. CV-2009-23757

**OPENING BRIEF OF PLAINTIFF/RESPONDENT/CROSS-APPELLANT
SYRINGA NETWORKS, LLC**

Appeal from the District Court of the Fourth Judicial District
of the State of Idaho, in and for the County of Ada,
Honorable Patrick H. Owen, District Judge, Presiding

David R. Lombardi, ISB No. 1965
Melodie A. McQuade, ISB No. 9433
Preston N. Carter, ISB No. 8462
GIVENS PURSLEY LLP
601 W. Bannock Street
P.O. Box 2720
Boise, ID 83701
*Counsel for Respondent/Cross-Appellant
Syringa Networks, LLC*

Merlyn W. Clark
Steven F. Schossberger
Tayler Tibbits
HAWLEY TROXELL ENNIS & HAWLEY LLP
877 Main Street, Suite 1000
P.O. Box 1617
Boise, ID 83701-1617
*Counsel for Appellant/Cross-Respondent Idaho
Department of Administration*

Steven J. Perfremment
BRYAN CAVE HRO
1700 Lincoln Street, Suite 4100
Denver, CO 80203
*Counsel for Appellant Qwest
Communications Company, LLC*

Stephen R. Thomas
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701
*Counsel for Appellant Qwest Communications
Company, LLC*

Robert S. Patterson
BRADLEY ARANT BOULT CUMMINGS
LLP
1600 Division Street, Suite 700
Nashville, TN 37203
Counsel for Appellant ENA Services, LLC

Phillip S. Oberrecht
GREENER BURKE SHOEMAKER
OBERRECHT, P.A.
950 W. Bannock Street, Suite 950
Boise, ID 83702
Counsel for Appellant ENA Services, LLC

TABLE OF CONTENTS

I.	STATEMENT OF THE CASE.....	1
A.	Nature of the Case	1
B.	Statement of Facts	2
C.	Course of Proceedings Below.....	2
II.	ISSUES PRESENTED ON APPEAL	5
III.	ARGUMENT.....	6
A.	Standard of Review	6
B.	The District Court Erred When it Excluded Mandatory Terms of Idaho Code § 67-5725 from the Judgment.	7
C.	The District Court Abused its Discretion by Refusing to Include Proposed Paragraph Three in the Judgment.	9
1.	The District Court Did Not Rule Consistently With the Mandatory Provisions of Idaho Code § 67-5725, <i>Syringa I</i> , or its Affirmative Duty to Invalidate Illegal Contracts.....	9
a.	Application of Idaho Code § 67-5725 is Mandatory.	9
b.	The District Court Had Authority to Order DOA to Comply with Idaho Code § 67-5725.	11
c.	Proposed Paragraph 3 is Consistent with <i>Syringa I</i> and the Court’s Duty to Invalidate Illegal Contracts.....	13
2.	The District Court Did Not Reach The Judgment Decision By An Exercise of Reason Because it Incorrectly Applied the Law and Failed to Disclose its Reasoning.....	15
D.	Syringa is Entitled to Attorney Fees and Costs on Appeal.....	17
IV.	CONCLUSION	17

TABLE OF AUTHORITIES

State Cases

<i>Henry v. Ysursa</i> , 231 P.3d 1010 (Idaho 2008).....	9, 11
<i>Hyta v. Finley</i> , 53 P.3d 338 (Idaho 2002)	14
<i>Massey v. Conagra Foods, Inc.</i> , 328 P.3d 456 (Idaho 2014)	7
<i>Musser v. Higginson</i> , 871 P.2d 809 (Idaho 1994)	11
<i>Palmer v. Spain</i> , 69 P.3d 1059 (Idaho 2003).....	15
<i>Quiring v. Quiring</i> , 944 P.2d 695 (Idaho 1997)	14
<i>Rife v. Long</i> , 908 P.2d 143 (Idaho 1995).....	9
<i>Rincover v. State, Dep't of Fin., Sec. Bureau</i> , 976 P.2d 473 (Idaho 1999).....	11
<i>Sheridan v. St. Luke's Reg'l Med. Ctr.</i> , 25 P.3d 88 (Idaho 2001)	15
<i>Slaathaug v. Allstate Ins. Co.</i> , 979 P.2d 107 (Idaho 1999)	6
<i>Spur Products Corp. v. Stoel Rives LLP</i> , 153 P.3d 1158 (Idaho 2007).....	6
<i>State ex rel. Parsons v. Bunting Tractor Co.</i> , 77 P. 2d 464 (Idaho 1938).....	10
<i>State v. Tribe</i> , 852 P.2d 87 (Idaho 1993).....	9
<i>Stearns v. Williams</i> , 240 P.2d 833 (Idaho 1952)	14
<i>Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.</i> , 803 P.2d 993 (Idaho 1991)	6, 9, 15, 17
<i>Syringa Networks, LLC, v. Idaho Department of Administration</i> , 305 P.3d 499 (Idaho 2013).....	14
<i>Twin Falls County v. Idaho Commission on Redistricting</i> , 271 P.3d 1202 (Idaho 2012).....	12
<i>Wood v. City of Lewiston</i> , 61 P.3d 575 (Idaho 2002).....	11

State Statutes

Idaho Code § 12-117	6, 17
Idaho Code § 12-120	6
Idaho Code § 12-120(3).....	6, 17
Idaho Code § 12-121	17
Idaho Code § 42-602.....	11
Idaho Code § 67-5725	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

State Rules

Idaho Appellate Rule 40	6, 17
Idaho Appellate Rule 41	6, 17
Idaho Rule of Civil Procedure 11(a).....	6
Idaho Rule of Civil Procedure 59(e).....	6

I. STATEMENT OF THE CASE

A. Nature of the Case

This cross-appeal concerns the scope of the judgment against the Department of Administration (“DOA”) resulting from the decision of the District Court that Idaho Education Network (“IEN”) Statewide Blanket Purchase Orders (“SBPOs”) 1308 and 1309, as amended are void.

Syringa Networks, LLC (“Syringa”) sued DOA to obtain a declaratory judgment that the IEN procurement process undertaken by DOA violated Idaho’s competitive bidding statutes. The District Court ultimately agreed and, consistent with the requirements of Idaho Code § 67-5725, entered judgment that IEN SBPOs 1308 and 1309, as amended are void.

Idaho Code § 67-5725 contains three provisions that apply when the competitive bidding statutes are violated. The first two provisions are mandatory. The last provision concerns the prosecution of an action for recovery of money advanced and involves prosecutorial discretion. The first mandatory provision of Idaho Code § 67-5725 provides that contracts or agreements made in violation of the bidding statutes are void. The second mandatory provision requires the proper officer of the state of Idaho under whose authority an unlawful contract or agreement was made to demand repayment of “any sum of money advanced” under the void contract or agreement. The third provision requires prosecution “forthwith” in the event of a refusal or delay in repayment of the money demanded. I.C. § 67-5725.

The District Court correctly ruled that DOA violated the bidding statutes and that the IEN contracts awarded by DOA to ENA Services, LLC (“ENA”) and Qwest Communications

Company, LLC (“Qwest”) as amended by Amendments No. 1 dated February 26, 2009 are void pursuant to Idaho Code § 67-5725. The District Court, however, did not give effect to the second mandatory provision of Idaho Code § 67-5725 and refused to enter a judgment ordering DOA to discharge its mandatory duty to demand return of any money advanced under the void contracts. The District Court’s decision constituted legal error and its subsequent refusal to amend the judgment was an abuse of discretion.

This Court should reverse the District Court’s decision and order the District Court to enter judgment requiring DOA to discharge its duty to demand repayment of any monies advanced in violation of Idaho law. Any other outcome ignores the mandatory provisions of Idaho Code § 67-5725 and permits DOA to evade the consequences of its violation of Idaho’s competitive bidding laws.

B. Statement of Facts

For purposes of brevity, Syringa will not recount the extensive facts of this case herein. Instead, Syringa incorporates by this reference the Statement of Facts found in its Response Brief, filed concurrently herewith.

C. Course of Proceedings Below

Syringa also will not recount the entire proceedings below and instead incorporates by this reference the Course of Proceedings Below found in its Response Brief, supplemented with the following background relevant to this cross-appeal.

The District Court issued a Memorandum Decision and Order Re: Pending Dispositive Motions on November 10, 2014 (“Dispositive Decision”) in which it granted summary judgment

as to Count Three of Syringa's Second Amended Post Appeal Complaint. (R. pp. 1638-1653.)

The Dispositive Decision held:

The Statewide Blanket Purchase Order to Qwest (SBPO 1308), as amended by Amendment One, and the Statewide Blanket Purchase Order to ENA (SBPO 1309), as amended by Amendment One, are void. Because these contract awards are void, the provisions of Idaho Code § 67-5725 now apply.

(R. p. 1651.) The District Court further directed counsel for Syringa to submit an appropriate form of judgment. (R. p. 1651.)

Syringa submitted a proposed judgment to the District Court (the "Proposed Judgment"). (R. pp. 2067-2068.) The Proposed Judgment contained three paragraphs. The first two paragraphs of the Proposed Judgment implemented the first mandatory requirement of Idaho Code § 67-5725 and stated that the IEN SBPOs, as amended by Amendments No. One, were void. The Third paragraph (referred to herein as "Proposed Paragraph 3") directed DOA to satisfy the second mandatory requirement of Idaho Code § 67-5725 as follows:

The Administrator of the Division of Purchasing, Department of Administration, shall demand repayment forthwith of all sums of money advanced by the State of Idaho in consideration of SBPO 1308, as amended by Amendment One, and in consideration of SBPO 1309, as amended by Amendment One.

(R. pp. 2067-2068.)

DOA, Qwest, and ENA moved for reconsideration of the Dispositive Decision. (R. pp. 1654-1657 (DOA), 1687-1691 (Qwest), and 1712-1714 (ENA).) Additionally, each filed objections to Syringa's Proposed Judgment that challenged Proposed Paragraph 3. (R. pp. 1684-1686 (Qwest); Exhibits 7 (DOA) and 8 (ENA) to the Affidavit of Melodie A. McQuade in

Support of Syringa Networks, LLC's Motion to Augment the Record, filed in this Court December 7, 2015 ("McQuade Affidavit").)

The District Court issued a Memorandum Decision and Order Re: Motions to Reconsider ("Reconsideration Decision") on February 11, 2015, denying each of the motions for reconsideration. (R. pp. 2016-2037.) In particular, the District Court confirmed its earlier ruling that SBPO 1308, as amended by Amendment One, and SBPO 1309, as amended by Amendment One (the "IEN Contracts, as Amended") are illegal and void under Idaho Code § 67-5725. (R. pp. 2030-2035.) In addition, the District Court noted that "[t]he statute also has financial consequences," which were not before it, and concluded that "except to declare that the awards are void, no other issue under Idaho Code § 67-5725 is before the Court." (R. pp. 2034-2035.)

The District Court then entered Judgment on February 11, 2015 that states:

1. Statewide Blanket Purchase Order 1308 to Qwest Communications, LLC, as amended by Amendment One, is void.
2. Statewide Blanket Purchase Order 1309 to ENA Services, LLC, as amended by Amendment One, is void.

(R. p. 2038.) The Judgment did not include Proposed Paragraph 3.

Syringa filed a Motion to Amend Judgment, or in the Alternative, for Partial Reconsideration and/or Clarification, requesting inclusion of Proposed Paragraph 3 in the Judgment. Alternatively, Syringa asked the District Court to reconsider its Reconsideration Decision to the extent the District Court did not believe the demand for repayment provision of Idaho Code § 67-5725 was at issue when it issued its summary judgment decision. (R. pp. 2060-2062, 2070-2079.) DOA and ENA filed oppositions to Syringa's motion. (R. pp. 2213-2226

(DOA), pp. 2263-2272 (ENA).) Syringa filed a reply brief (R. pp. 2273-2287), after which Qwest filed its opposition to the motion. (R. pp. 2288-2296.)

The District Court issued a Memorandum Decision and Order Re: Plaintiff's Motion to Amend Judgment, Or in the Alternative, For Partial Reconsideration and/or Clarification on April 7, 2015 ("Judgment Decision"). (R. pp. 2337-2345.) The Judgment Decision contained approximately one page of analysis that ended with denial of Syringa's motion.

In its decision, the District Court acknowledged that its summary judgment decision in favor of Syringa implicated the provisions of Idaho Code § 67-5725 but concluded that that application of Idaho Code § 67-5725 would involve "development of factual and legal issues that have not been presented to the Court." (R. pp. 2342 - 2343.) The District Court also stated the issue of whether DOA would comply with its statutory obligations was not before it and that it had granted the full relief requested by Syringa in Count Three. (R. p. 2343.) The District Court specifically denied Syringa's motion to amend the judgment but said nothing about the reconsideration aspect of the motion. (R. p. 2343.)

Syringa timely filed a notice of cross-appeal with respect to the District Court's Reconsideration Decision and Judgment Decision. (R. pp. 2346-2350.)

II. ISSUES PRESENTED ON APPEAL

1. Whether the District Court erred and/or abused its discretion in determining that issues concerning DOA's compliance with the requirements of Idaho Code § 67-5725 were not before the Court in its Memorandum Decision and Order Re: Motions to Reconsider dated February 11, 2015 and failing thereafter to address the issue when it was raised by Plaintiff's Motion to Amend Judgment, or in the Alternative, for Partial Reconsideration and/or Clarification in its Memorandum

Decision and Order Re: Plaintiff's Motion to Amend Judgment, or in the Alternative, for Partial Reconsideration and/or Clarification dated April 7, 2015.

2. Whether the District Court erred and/or abused its discretion by denying Plaintiff's Motion to Amend Judgment, or in the Alternative, for Partial Reconsideration and/or Clarification by refusing to amend the Judgment to include an order directing the DOA to comply with mandatory language contained in Idaho Code § 67-5725 in its Memorandum Decision and Order Re: Plaintiff's Motion to Amend Judgment, or in the Alternative, for Partial Reconsideration and/or Clarification dated April 7, 2015.
3. Whether Syringa is entitled to attorney fees and costs on appeal under Idaho Code §§ 12-120(3), 12-120, 12-117, and Idaho Appellate Rules 40 and 41.

III. ARGUMENT

A. Standard of Review

A trial court's decision to alter or amend a judgment under I.R.C.P. 59(e) is committed to the sound discretion of the trial court. *Slaathaug v. Allstate Ins. Co.*, 979 P.2d 107, 109 (Idaho 1999). When a trial court's discretionary decision is reviewed on appeal, the appellate court conducts a multi-tiered inquiry to determine: (1) whether the lower court correctly perceived the issue as one of discretion; (2) whether the lower court acted within the boundaries of such discretion and consistently with any legal standards applicable to the specific choices before it; and (3) whether the court reached its decision by an exercise of reason. *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 803 P.2d 993, 1000 (Idaho 1991).

A trial court's decision on a motion for reconsideration under I.R.C.P. 11(a) is generally one that rests in the discretion of the trial court. *Spur Products Corp. v. Stoel Rives LLP*, 153 P.3d 1158, 1161 (Idaho 2007). A trial court's decision to reconsider a summary judgment decision, however, is reviewed by an appellate court *de novo*. *Massey v. Conagra Foods, Inc.*,

328 P.3d 456, 460 (Idaho 2014).

B. The District Court Erred When it Excluded Mandatory Terms of Idaho Code § 67-5725 from the Judgment.

The District Court recognized and explicitly held in its Dispositive Decision that the provisions of Idaho Code § 67-5725 would apply to the IEN Contracts, as Amended as a consequence of its decision:

The Statewide Blanket Purchase Order to Qwest (SBPO 1308), as amended by Amendment One, and the Statewide Blanket Purchase Order to ENA (SBPO 1309), as amended by Amendment One, are void. Because these contract awards are void, *the provisions of Idaho Code § 67-5725 now apply.*

(R. p. 1651 (emphasis added).)

The relevant portions of Idaho Code § 67-5725 that were within the jurisdiction of the court to implement provide the following:

All contracts or agreements made in violation of the provisions of this chapter shall be void and any sum of money advanced by the state of Idaho in consideration of any such contract or agreement shall be repaid forthwith. In the event of refusal or delay when repayment is demanded by the proper officer of the state of Idaho, under whose authority such contract or agreement shall have been made or entered into, every person so refusing or delaying, together with his surety or sureties, shall be forthwith prosecuted at law for the recovery of such sum of money so advanced.

I.C. § 67-5725. This statute contains two related mandatory requirements that apply to DOA. First, contracts or agreements that violate the law “shall be void.” *Id.* Second, the proper officer of the state of Idaho under whose authority an unlawful contract or agreement was made must demand repayment of “any sum of money advanced” under the void contract or agreement. *Id.*

Syringa's Proposed Judgment gave effect to both mandatory provisions of Idaho Code § 67-5725. (R. pp. 2067-2068.) As noted, DOA, Qwest, and ENA each filed objections to the Proposed Judgment, including Proposed Paragraph 3. (R. pp. 1684-1686 (Qwest); Exhibits 7 (DOA) and 8 (ENA) to the McQuade Affidavit.) Qwest also argued against the inclusion of Proposed Paragraph 3 in the Judgment (which Qwest misconstrued as a pre-determination by the District Court that money had been "advanced" under the void contracts) in its Motion for Reconsideration. (R. pp. 1697-1705.) Syringa responded to Qwest's argument by noting, among other things, that Qwest's objection was premature and that the "details of performance," including whether any money had been "advanced" were matters to be addressed, in the first instance, by the proper executive branch official (in this case the Administrator of the Division of Purchasing of the DOA). (R. pp. 1972-1976.) DOA also argued against inclusion of Proposed Paragraph 3 in the Judgment. (R. pp. 1958-1961.)

Even though the Proposed Judgment, objections thereto, and briefing regarding Proposed Paragraph 3 were submitted, the District Court ruled in its Reconsideration Decision that "[e]xcept to declare that the awards are void, no other issue under Idaho Code § 67-5725 is before the Court." (R. p. 2034.) The District Court went on:

The Court has determined that the awards to Qwest and ENA violate several provisions of Idaho Code Title 67, Chapter 57. As a consequence, the awards are void. The statute also has financial consequences. However, any such issues are not presently before the Court.

(R. p. 2034.) The Judgment, entered the same day as the Reconsideration Decision, omitted Proposed Paragraph 3. (R. p. 2038.)

The District Court erred in omitting Proposed Paragraph 3 from the Judgment and in ruling that issues concerning the financial consequences of Idaho Code § 67-5725 were not before it when it reconsidered the Dispositive Decision. As set forth in greater detail below, Idaho Code § 67-5725 sets forth mandatory consequences that apply as a result of the District Court's ruling that the SBPOs, as Amended, are illegal and void. Inclusion of Proposed Paragraph 3 in the Judgment was required under the circumstances of this case.

C. The District Court Abused its Discretion by Refusing to Include Proposed Paragraph Three in the Judgment.

1. The District Court Did Not Rule Consistently With the Mandatory Provisions of Idaho Code § 67-5725, *Syringa I*, or its Affirmative Duty to Invalidate Illegal Contracts.¹

a. Application of Idaho Code § 67-5725 is Mandatory.

Idaho Code § 67-5725 provides that contracts or agreements that violate the law “*shall* be void” and that money “advanced” in consideration of such void contracts or agreements “*shall* be repaid forthwith” after “repayment is demanded by the proper officer of the state of Idaho.” I.C. § 67-5725 (emphasis added). In interpreting statutes, courts “repeatedly have construed the word ‘shall’ as being mandatory, not discretionary.” *Henry v. Ysursa*, 231 P.3d 1010, 1013 (Idaho 2008) (citing *State v. Tribe*, 852 P.2d 87, 92 (Idaho 1993)); see *Rife v. Long*, 908 P.2d 143, 150 (Idaho 1995) (“When used in a statute, the word ‘may’ is permissive rather than the imperative or mandatory meaning of ‘must’ or ‘shall.’”).

¹ The District Court correctly perceived its decision on the Motion to Amend Judgment as one of discretion (R. p. 2340), and therefore the first step of this Court's inquiry is satisfied. *Sun Valley Shopping Ctr., Inc.*, 803 P.2d at 1000.

Idaho Code § 67-5725 contains no words indicating that DOA has discretion to decide whether to comply with the demand provisions of the statute. If money was “advanced” by the state of Idaho “in consideration” of any contract or agreement rendered void as a result of the application of the statute, then DOA is required to make a demand for repayment. In fact, this Court discussed the demand for repayment provision of an earlier version of Idaho Code § 67-5725 in compulsory terms, stating, “it has been provided that it is the duty of the state official under whose authority a void contract has been made or entered into to demand repayment of the sums of money advanced by the state on such contract.” *State ex rel. Parsons v. Bunting Tractor Co.*, 77 P. 2d 464, 468 (Idaho 1938). The statute does not, however, define “advanced” but leaves the determination whether and how much money was “advanced” in consideration of the void contracts to the executive branch.

Proposed Paragraph 3 gave effect to both mandatory provisions of Idaho Code § 67-5725, was consistent with the Dispositive Decision that recognized the mandatory application of the statute, and also left the determination of whether money was “advanced” in consideration of the void contracts to the proper officer of the State of Idaho. Proposed Paragraph 3 required no legal or factual determination by the District Court. It required only that the District Court order the proper official within DOA to make the demand required by the statute.

The point of Proposed Paragraph 3 is to start the administrative process required by Idaho Code § 67-5725 to determine whether money was “advanced” in consideration of the void contracts. Entry of judgment including Proposed Paragraph 3 would require the proper official of DOA to make a determination whether money had been “advanced” by the State of Idaho in

consideration of the void contracts, and if it had, to demand repayment. If, on the other hand, the proper official determined that no money had been “advanced” in consideration of the void contracts, the official would make no demand. The District Court’s decision that “the application of [Idaho Code § 67-5725] involves development of factual and legal issues that have not been presented to the Court” was incorrect because those determinations are required to be made, in the first instance, by the proper official as a consequence of the ruling that the IEN Contracts, as Amended, are illegal. (R. p. 2343.)

b. The District Court Had Authority to Order DOA to Comply with Idaho Code § 67-5725.

Courts have authority to order executive branch officials to follow the law. *See Henry*, 231 P.3d at 1011-13 (holding that the Secretary of State was required to place a person’s name on the election ballot if certain statutory conditions were met). Additionally, courts have the power to rule that a statute imposes mandatory duties of performance upon an executive branch official, even though the “details of the performance of the duty are left to the [official’s] discretion.” *See Musser v. Higginson*, 871 P.2d 809, 812 (Idaho 1994) (addressing official’s duty in the writ of mandate context) (“The director’s duty pursuant to I.C. § 42–602 is clear and executive. Although the details of the performance of the duty are left to the director’s discretion, the director has the duty to distribute water.”) *abrogated on other grounds by Rincover v. State, Dep’t of Fin., Sec. Bureau*, 976 P.2d 473 (Idaho 1999); *accord Wood v. City of Lewiston*, 61 P.3d 575, 579 (Idaho 2002) (“the municipal power enjoys broad discretion, so long as mandatory statutory procedures are followed”).

In *Twin Falls County v. Idaho Commission on Redistricting*, this Court considered a petition challenging the constitutionality of a legislative redistricting plan. 271 P.3d 1202, 1203 (Idaho 2012). In ruling that the commission had failed to comply with mandatory constitutional provisions concerning division of counties, this Court considered the commission’s argument that its plan fell within the commission’s discretionary powers. *Id.* at 1207. Rejecting the argument, the *Twin Falls County* court explained:

This constitutional provision is a restriction on the commission’s discretion, not a grant of discretion. *The commission can certainly exercise discretion to the extent that it is not limited by the Constitution or by statute*, but it does not have the discretion to exceed the limits imposed by either the Constitution or a statute.

Id. (emphasis added). Thus, the fact that a governmental entity or official is afforded some discretion in carrying out mandatory duties does not render those mandatory duties entirely discretionary and does not strip courts of their authority to order compliance with mandatory statutes.

DOA must comply with the mandates of Idaho Code § 67-5725. DOA does, however, have some discretion in how it carries out that obligation. For example, while the statute requires the proper officer to demand repayment of monies advanced under a void contract or agreement, the officer must initially determine (within the parameters of the law) whether money has been “advanced” and the amount to be demanded. Further, the statute does not mandate what form the demand should take but leaves that detail to the officer’s discretion. Similarly, although the statute requires persons refusing such demand to be prosecuted for recovery of the money, the details of that prosecution are not set out in the statute and involve prosecutorial

discretion. *See* I.C. § 67-5725.

Proposed Paragraph 3 did not impede any discretion vested in DOA because it followed the wording of Idaho Code § 67-5725:

The Administrator of the Division of Purchasing, Department of Administration, shall demand repayment forthwith of all sums of money advanced by the State of Idaho in consideration of SBPO 1308, as amended by Amendment One, and in consideration of SBPO 1309, as amended by Amendment One.

(R. pp. 2067-2068.) The plain language of the statute makes it clear that the contracting official must make demand for repayment of monies advanced. Proposed Paragraph 3 directed the proper officer to make that demand. Proposed Paragraph 3 did not, however, state whether any money was, in fact, “advanced” and did not direct what amount should be demanded. Whether money was “advanced” as used in the statute and, if so, the determination of the amount to be demanded are matters to be determined first by the proper DOA officer.

The District Court erroneously concluded that “whether the State will comply with its obligations to demand and prosecute also involve development of factual and legal issues which are not presently before the Court.” (R. p. 2343.) That ruling ignored the limited scope of Proposed Paragraph 3, which simply ordered DOA to follow the mandates of the statute. The District Court identified no particular factual or legal issues that needed development because there are none.

c. Proposed Paragraph 3 is Consistent with *Syringa I* and the Court’s Duty to Invalidate Illegal Contracts.

This Court did not analyze the meaning of Idaho Code § 67-5725 in *Syringa I*, but it set

out the pertinent statutes found in Chapter 57 and stated that “[a]ll contracts made in violation of these statutes are void and any money advanced by the State in consideration of such contracts must be repaid.” *Syringa Networks, LLC, v. Idaho Department of Administration*, 305 P.3d 499, 504 (Idaho 2013) (“*Syringa I*”) (citing I.C. § 67-5725). Even though this Court did not discuss the demand for repayment provision of the statute, it noted that the provision applies to contracts that violate Idaho’s competitive bidding statutes. Proposed Paragraph 3 was, therefore, consistent with this Court’s remand instructions for consistent proceedings.

Proposed Paragraph 3 was also consistent with the District Court’s affirmative duty to *sua sponte* address and refuse to enforce illegal contracts. *See Hyta v. Finley*, 53 P.3d 338, 340-41 (Idaho 2002); *Quiring v. Quiring*, 944 P.2d 695, 701-02 (Idaho 1997); *Stearns v. Williams*, 240 P.2d 833, 842 (Idaho 1952). That duty became obvious when DOA argued to the District Court that its duty to demand repayment was discretionary rather than mandatory, and gave no indication that it had, or would, engage in the process required by Idaho Code § 67-5725. (R. pp. 1958-1961, 2223-2224.) Proposed Paragraph 3 requires DOA to engage in the corrective process required by Idaho Code § 67-5725. Exclusion of Proposed Paragraph 3 allows that process to be ignored and potentially ratifies payments advanced by DOA under the void contracts.

The District Court also stated that its Judgment provided Syringa with the full relief Syringa requested in its declaratory judgment action and that to its knowledge, “this ruling has put an end to any work under SBPO 1308 and SBPO 1309.” (R. p. 2343.) This statement ignored the mandates of Idaho Code § 67-5725 and the District Court’s independent duty to fully

address the illegal IEN Contracts, as Amended.

The District Court did not rule consistently with the legal standards applicable to the specific choices before it because it did not give effect to the automatic and mandatory provisions of Idaho Code § 67-5725. Further, the decision was not consistent with *Syringa I* or the District Court's duty to address the illegal contracts before it. The Judgment Decision, therefore, fails at the second step of this Court's review. *Sun Valley Shopping Ctr., Inc.*, 803 P.2d at 1000.

2. The District Court Did Not Reach The Judgment Decision By An Exercise of Reason Because it Incorrectly Applied the Law and Failed to Disclose its Reasoning.

"The role of this Court, in determining if the district court reached its decision by an exercise of reason, is to review the process the district court engaged in to make its decision." *Palmer v. Spain*, 69 P.3d 1059, 1062 (Idaho 2003); *see Sheridan v. St. Luke's Reg'l Med. Ctr.*, 25 P.3d 88, 95 (Idaho 2001) (in order for the appellate court to review the process used by the district court, the law requires "the district judge to disclose his reasoning for granting or denying the motion").

The record does not show that the District Court in this case reached the decision to deny Syringa's Motion to Amend Judgment by an exercise of reason. The Judgment Decision contains five pages of background and argument summary followed by approximately one page of analysis that is vague and contradictory. First, the District Court explained that its decision that the IEN Contracts, as Amended, are illegal and void "necessarily implicates the other consequences of Idaho Code § 67-5725." (R. p. 2342.) The District Court went on to quote the

mandatory provisions of Idaho Code § 67-5725. (R. pp. 2342-2343.) The District Court, however, then stated:

In the Court's view, the application of this provision involves development of factual and legal issues that have not been presented to the Court. Further, whether the State will comply with its obligations to demand and prosecute also involve development of factual and legal issues which are not presently before the Court.

(R. p. 2343.)

The District Court did not identify what factual or legal issues need to be determined before the application of Idaho Code § 67-5725. As the District Court had already ruled the IEN Contracts, as Amended, were illegal and void, there were no additional factual or legal issues that needed to be developed. Further, because the District Court did not disclose its reasoning, it is unclear how the District Court reached its conclusion.

The District Court also failed to identify any factual or legal issues that bore on the issue of whether DOA would “comply with its obligations to demand and prosecute” under Idaho Code § 67-5725. (R. p. 2343.) Syringa’s Motion to Amend Judgment asked the District Court to order DOA to engage in the process required by Idaho Code § 67-5725. Syringa did not ask the District Court to determine any details of DOA’s compliance and said nothing about prosecution. The prosecution portion of Idaho Code § 67-5725 only becomes relevant after the proper officer determines money was advanced in consideration of a void contract, demands repayment of money advanced and the repayment is denied or delayed. *See* I.C. § 67-5725. That aspect of the statute was not put at issue by Syringa’s motion or Proposed Paragraph 3.

Thus, on one hand the District Court confirmed its earlier rulings that Idaho Code § 67-5725 applied under the circumstances. On the other hand, it ruled there were outstanding legal and factual issues precluding application of Idaho Code § 67-5725. Those two conclusions are contradictory and thus not reasonable. The District Court did not, in other words, reach the Judgment Decision by an exercise of reason and the decision fails the third step of the *Sun Valley Shopping Center* analysis. 803 P.2d at 1000.

D. Syringa is Entitled to Attorney Fees and Costs on Appeal.

If Syringa prevails on this cross-appeal, Syringa is entitled to attorney fees and costs. Idaho Appellate Rule 41 provides for the award of attorney fees, and Idaho Appellate Rule 40 provides for the award of costs to the prevailing party on appeal. *See* I.A.R. 40; I.A.R. 41. For the reasons stated in the attorney fees portion of Syringa's Response Brief filed concurrently herewith and incorporated herein by this reference, Syringa is entitled to its costs and fees if it prevails on appeal under Idaho Code § 12-120(3), as the cross-appeal involves a commercial transaction between Syringa and DOA.

To preserve its ability to seek appeal fees pursuant to Idaho Appellate Rule 41(a), in the event DOA presents opposition argument that is frivolous, without foundation, or without a reasonable basis in fact or law, Syringa is entitled to its costs and fees under Idaho Code §§ 12-121 and 12-117.

IV. CONCLUSION

The District Court erred and abused its discretion by refusing to include Proposed Paragraph 3 in the Judgment. Proposed Paragraph 3 gave effect to the mandatory provisions of

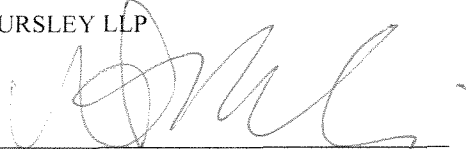
Idaho Code § 67-5725 that were triggered by the District Court's ruling that the IEN Contracts, as Amended, violated Idaho's competitive bidding statutes. By omitting any requirement that DOA comply with its obligation to initiate the repayment decision process, the District Court allowed DOA to continue to ignore its statutory duties and permitted DOA's interpretation that its mandatory duties were discretionary to survive. As it stands, the Judgment does not fully address the issues presented by Syringa's declaratory judgment action and is inconsistent with *Syringa I*, the District Court's duty to invalidate illegal contracts, and Idaho Code § 67-5725.

This Court should reverse the District Court's Judgment Decision and remand the case to the District Court for entry of a judgment that complies with the mandates of Idaho Code § 67-5725 and includes Proposed Paragraph 3.


RESPECTFULLY SUBMITTED this 9th day of December, 2015.

GIVENS PURSLEY LLP

By:


David R. Lombardi

By:


Melodie A. McQuade

Attorneys for Syringa Networks, LLC

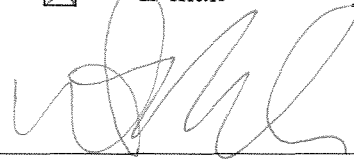
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of December, 2015, the foregoing was served as follows:

Merlyn W. Clark	<input checked="" type="checkbox"/>	U. S. Mail
Steven F. Schossberger	<input type="checkbox"/>	Hand Delivered
Taylor Tibbits	<input type="checkbox"/>	Overnight Mail
HAWLEY TROXELL ENNIS & HAWLEY LLP	<input type="checkbox"/>	Facsimile
877 Main Street, Suite 1000	<input checked="" type="checkbox"/>	E-mail
P.O. Box 1617		
Boise, ID 83701-1617		
<i>Counsel for Appellant/Cross-Respondent Idaho</i>		
<i>Department of Administration</i>		
Steven J. Perfremment	<input checked="" type="checkbox"/>	U. S. Mail
BRYAN CAVE HRO	<input type="checkbox"/>	Hand Delivered
1700 Lincoln Street, Suite 4100	<input type="checkbox"/>	Overnight Mail
Denver, CO 80203	<input type="checkbox"/>	Facsimile
<i>Counsel for Appellant Qwest Communications</i>	<input checked="" type="checkbox"/>	E-mail
<i>Company, LLC</i>		
Stephen R. Thomas	<input checked="" type="checkbox"/>	U. S. Mail
MOFFATT, THOMAS, BARRETT, ROCK &	<input type="checkbox"/>	Hand Delivered
FIELDS, CHARTERED	<input type="checkbox"/>	Overnight Mail
101 S. Capitol Blvd., 10 th Floor	<input type="checkbox"/>	Facsimile
P.O. Box 829	<input checked="" type="checkbox"/>	E-mail
Boise, ID 83701		
<i>Counsel for Appellant Qwest Communications</i>		
<i>Company, LLC</i>		
Robert S. Patterson	<input checked="" type="checkbox"/>	U. S. Mail
BRADLEY ARANT BOULT CUMMINGS LLP	<input type="checkbox"/>	Hand Delivered
1600 Division Street, Suite 700	<input type="checkbox"/>	Overnight Mail
Nashville, TN 37203	<input type="checkbox"/>	Facsimile
<i>Counsel for Appellant ENA Services, LLC</i>	<input checked="" type="checkbox"/>	E-mail

Phillip S. Oberrecht
GREENER BURKE SHOEMAKER
OBERRECHT, P.A.
950 W. Bannock Street, Suite 950
Boise, ID 83702
Counsel for Appellant ENA Services, LLC

<input checked="" type="checkbox"/>	U. S. Mail
<input type="checkbox"/>	Hand Delivered
<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	Facsimile
<input checked="" type="checkbox"/>	E-mail



David R. Lombardi